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THE NEED FOR (MORE) NEW GUIDANCE REGARDING RELIGIOUS EXPRESSION IN THE AIR FORCE

by

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14. ABSTRACT

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Abstract

Recent conflicts surrounding religious expression in the military have highlighted the need for clear and comprehensive guidance on the topic. Currently, commanders have available to them several layers of guidance, but much of that can be confusing to commanders trained in neither law nor theology. Using the problem-solution method, this paper explores and analyzes the guidance currently available, including Supreme Court and Congressional mandates, Department of Defense regulation and Air Force guidance. In addition, this paper suggests new guidance regarding religious expression for uniformed Air Force personnel. The suggested new guidance is comprised of three simple rules: no public prayer at command functions; no coercive evangelizing or proselytizing; and no official endorsement of any particular religion or religion in general. The suggested new guidance attempts to strike an appropriate balance between the rights of Air Force members under the Establishment, Free Exercise and Free Speech clauses of the First Amendment, while allowing commanders to straightforwardly apply the guidance to real situations.

Introduction

Over the past few years, the Air Force and the other services have repeatedly found themselves in the news because of conflicts surrounding religious expression. These conflicts raise constitutional issues, as commanders and lawyers attempt to strike a balance between members' rights under three major First Amendment clauses -- the Establishment Clause, the Free Exercise Clause and the Free Speech Clause. In striking that balance, commanders and lawyers must currently sift through many layers of confusing guidance. The lack of clear, commander-friendly guidance on the issue of religious expression in the Air Force compels commanders to waste valuable mission time searching for answers.

This paper will briefly review the history of recent conflicts surrounding religious expression in the military, explore the history of Supreme Court and Congressional mandates on religious expression issues, and examine Department of Defense rules on religious accommodation and expression. In addition, this paper will analyze both current and previously-issued Air Force guidance on religious expression, including the 2005 *Interim Guidelines Concerning Religious Expression in the Air Force* and the 2006 *Revised Interim Guidelines Concerning Religious Expression in the Air Force*. Finally, this paper will suggest new guidance regarding religious expression for uniformed Air Force members which should be considered for implementation Department of Defense-wide. The suggested new guidance incorporates Supreme Court, Congressional and Department of Defense mandates, yet is clear enough for commanders to apply without the necessity for consultation with a lawyer-chaplain team.

Problem Background

The Air Force and the other services have recently been forced to deal with several high-visibility religious issues, including those at the service academies, in basic training, at the Pentagon and in deployed locations. Starting with the Air Force, in 2003, the Christian Leadership Ministries published an annual advertisement in the United States Air Force Academy (USAFA) base paper, including the statement, "We believe that Jesus Christ is the only real hope for the world. If you would like to discuss Jesus, feel free to contact one of us!" The signatories included over two hundred USAFA faculty and staff, including a majority of USAFA department heads.[1]

In 2004, Christian Embassy, a group established in 1975 to minister to members of Congress, ambassadors, presidential appointees and Pentagon officials[2] filmed a promotional video inside the Pentagon showing several generals and senior defense officials talking about the importance of religion in their jobs and lives. In 2007, the Department of Defense Inspector General publicly released a report finding that senior Army and Air Force personnel violated the Joint Ethics Regulation when they participated in the video while in uniform and on active duty.[3]

On 28 April 2005, Americans United for the Separation of Church and State sent a multipage complaint to then-Secretary of Defense Rumsfeld, documenting what it called systematic and pervasive religious bias and intolerance at the highest levels of USAFA command structure.[4] On 2 May 2005, the Acting Secretary of the Air Force directed a team investigation to assess the religious climate at USAFA.[5] Also in May 2005, Chaplain (Capt.) Melinda Morton, assigned to USAFA, stated that the religious problem at USAFA "is pervasive."[6]

In June 2005, the Headquarters Review Group Concerning the Religious Climate at [USAFA] (Review Group) released its report. The report documented seven specific events of

what appeared to be "questionable behavior," and referred those events for command follow-up. In addition, the Review Group identified nine findings regarding the overall climate and made nine recommendations. The first recommendation was the following: "develop policy guidelines for Air Force commanders and supervisors regarding religious expression."[7]

In July 2005, Chaplain Brig. Gen. Cecil Richardson, then the Deputy Chief of Air Force Chaplains (presently a Maj. Gen. and Chief of Air Force Chaplains at the time of publication), stated in a *New York Times* interview, "We [chaplains] will not proselytize, but we reserve the right to evangelize the unchurched."[8] The distinction, he said, is that proselytizing is trying to convert someone in an aggressive way, while evangelizing is more "gently" sharing the gospel.[9]

On 6 October 2005, USAFA graduate Mikey Weinstein joined four 2004 USAFA graduates in suing the Air Force in federal district court, claiming that USAFA illegally imposed Christianity on cadets at USAFA. The case was dismissed by the judge a year later, who ruled that the plaintiffs had graduated and were thus unable to prove any direct harm.[10]

On 25 October 2006, former Navy chaplain Gordon Klingenschimitt filed suit against the Navy in federal district court for, among other claims, violating his First Amendment rights by discouraging him from praying in the name of Jesus.[11] While he was a Navy chaplain, Klingenschmitt's commander issued him a direct order which instructed him that he could only wear his uniform if conducting a bona-fide religious service. Soon afterward, Klingenschmitt conducted a prayer vigil in uniform outside the White House, followed by a news conference to pressure President Bush to issue an Executive Order regarding military chaplains' right to pray as they wished. Klingenschmitt was subsequently court-martialed for failing to obey a direct order and was involuntarily separated from the Navy.[12]

The religious issues continued well into 2008. In February 2008, USAFA was criticized by Muslim and religious freedom organizations for playing host to and paying three speakers who critics say are evangelical Christians pretending to be alleged former Muslim terrorists.[13] On 5 March 2008, Army SPC Jeremy Hall, an atheist, and Military Religious Freedom Foundation (MRFF), a group headed by USAFA grad Mikey Weinstein, filed suit against Secretary of Defense Robert Gates and SPC Hall's commander, MAJ Freddy Welborn. The suit alleged that SPC Hall was denied his First Amendment right to be free of government sponsored religious activity.[14] On 10 October 2008, the plaintiffs dismissed the suit.[15]

In August 2008, the *Air Force Times* interviewed Chief of Air Force Chaplains Maj. Gen. Cecil Richardson. A reporter asked him to respond to a question about whether he was concerned that a Christian chaplain who was visited by a troubled airman who wasn't interested in religion might steer the airman toward Jesus. Chaplain Richardson's response: "Well, you know, sometimes Jesus is what they need. They're asking for it."[16]

On 24 September 2008, PVT Michael Handman, a Jewish soldier attending basic training at Fort Benning, GA suffered a beating at the hands of fellow soldiers.[17] MRFF, in a 16 October 2008 letter to Secretary Gates, alleged that prior to the beating, PVT Handman was a victim of anti-Semitic actions by his drill sergeants.[18]

On 25 September 2008, MRFF and Army SPC Dustin Chalker, also an atheist, filed suit against Secretary Gates. The suit alleges that the plaintiff was required to attend military functions or formations which included sectarian Christian prayers, thus violating his rights under the Establishment Clause of the First Amendment.[19]

On 16 January 2009, Col. Kimberly Toney, Commander of the 501st Combat Support Wing at Alconbury, England, sent an email to all airmen in the wing, inviting them to watch an

attached video link highlighting an inspirational story.[20] The attached link was to a Catholic website which had posted a video about Nick Vujicic, a man who was born without arms or legs. In the video, Mr. Vujicic attributed his ability to deal with his disability to his faith in Jesus.[21] In addition, information on the website attacked President Obama's stance on abortion by depicting him in a Nazi uniform and calling him a "forerunner of the Antichrist."[22] Col. Toney sent an apology by email to all airmen in the wing. Third Air Force is currently investigating the matter.[23]

The issues described above are merely the ones which received media attention and likely represent the tip of the iceberg with respect to religious conflict in today's multi-faith military. In addition, the issues highlight the underlying tension between the First Amendment's two main clauses dealing with religious expression, the Establishment Clause and the Free Exercise Clause ("Congress shall make no law respecting an establishment of religion nor prohibiting the free exercise thereof. . ").[24] The underlying tension exists because the Establishment Clause appears to limit religious expression while the Free Exercise Clause appears to encourage it.

The Air Force first issued direct guidance on the exercise of religion in August 2005, when it issued *Interim Guidelines Concerning Free Exercise of Religion in the Air Force*. That guidance was soon followed by *Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force* in February 2006. The guidance has not appeared to alleviate the confusion and misunderstanding surrounding the subject, as is evidenced, at a minimum, by Chaplain Richardson's August 2008 comments to the *Air Force Times*, discussed above. If the Chief Chaplain of the Air Force can't get it right, it is difficult to see how commanders in the field, trained in neither law nor religion, can be expected to pick their way through the legally confusing and emotionally-charged topic, given the current state of Air Force guidance.

First Amendment Legal Framework

In formulating official guidance regarding military members' exercise of religion in the Air Force, one must address the rights inherent in two seemingly contradictory clauses in the First Amendment, the Establishment Clause ("Congress shall make no law respecting an establishment of religion. . .")[25] and the Free Exercise Clause (". . . nor prohibiting the free exercise thereof. . ."). [26] In addition, because the exercise of religion often involves both actual and symbolic speech, officials attempting to formulate guidance must also consider the rights of military members under the Free Speech Clause of the First Amendment ("Congress shall make no law. . . abridging the freedom of speech. . ."). [27] Officials must possess a clear understanding of the legal framework enclosing the interplay of these three First Amendment clauses before they can formulate new religious guidance.

Establishment Clause

The Establishment Clause "mandates government neutrality between religion and religion, and between religion and non-religion."[28] Consequently, the government cannot act in a way which favors one religion over another, nor can it act in a way which favors religion over non-religion. *Lemon v. Kurtzman* [29] remains the Supreme Court's most influential case on the Establishment Clause. In *Lemon*, the Supreme Court articulated what has become known as "the *Lemon* Test," a standard against which to measure government action to determine if it is constitutional under the Establishment Clause.[30]

In 1971 three lawsuits – two from Rhode Island and one from Pennsylvania – were reviewed by the United States Supreme Court. The plaintiffs in the lawsuits asserted that certain

state monetary support of church-affiliated private schools violated the Establishment Clause. In holding that the Rhode Island and Pennsylvania systems violated the Establishment Clause, the Supreme Court articulated what has become known as the *Lemon* Test. In order for a statute to pass muster under the Establishment Clause (and therefore be held constitutional), all three prongs of the *Lemon* Test must be satisfied: (1) the statute must have a secular legislative purpose (meaning a legitimate, non-religious purpose as judged by an objective observer);[31] (2) the statute's principal or primary effect must neither advance nor inhibit religion (the statute must be "religion-neutral"); and (3) the state must not foster "an excessive government entanglement with religion," meaning that the government should not involve itself in the workings of a religion (or a religious organization) and vice versa.[32]

Most Establishment Clause cases which reach the Supreme Court have a problem with the second prong of the *Lemon* Test, the "effects" prong. In many effects prong cases, the government establishes a rule which appears neutral on its face but its primary effect either aids or hinders religion. In *Lemon v. Kurtzman*, the issue was not the effects prong but the "entanglement" or third prong. The states of Rhode Island and Pennsylvania were careful to ensure that the money provided to the private schools was used only for secular purposes. To that end, the states set up extensive auditing systems to monitor the private schools' use of the state money. Ironically, because the states went to such lengths to ensure that the money was only used for non-religious purposes (so the states would not be violating the Constitution by aiding religion), the states ended up involving themselves too intimately in the business of the religious schools. Consequently, the Supreme Court found excessive entanglement under the third prong of the *Lemon* Test and held that the Pennsylvania and Rhode Island systems were in violation of the Constitution.

Lemon v. Kurtzman has not been overturned by the Supreme Court, but at times the Supreme Court has used alternate tests to determine constitutionality under the Establishment Clause. The Coercion Test is one alternative, under which the Court looks at whether the state has by its actions essentially forced someone to support or participate in religion.[33] In holding unconstitutional a rabbi-led prayer at a middle school graduation ceremony, the Supreme Court applied the Coercion Test and stated that, "at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise."[34] Applying both the *Lemon* Test and the Coercion Test, the Supreme Court also struck down student-led prayer at a high school football game.[35] When considering the concept of coercion, the Supreme Court would likely give more leeway to the government as students grow older and more mature; the older a student is, the less likely the Court is to find that he was coerced.

In 2003, the Fourth Circuit Court of Appeals applied the Coercion Test to "voluntary" prayer at the noon meal at Virginia Military Institute. Cadets were required to stand quietly during the "voluntary" prayer and were not allowed to go about their business until it was over. In finding the prayer unconstitutional, the court reasoned that because of the strict military-type environment at Virginia Military Institute, any real voluntariness was taken out of the situation.[36] The Fourth Circuit made this holding in spite of the fact that Virginia Military Institute cadets are older and more mature than the middle school or high school students at issue in previous cases. While the decision of a Court of Appeals obviously doesn't carry the same weight as a Supreme Court decision, it is indicative of how the issue would be resolved, were it to reach the Supreme Court. In addition, the Virginia Military Institute decision also sheds some light on how a court would rule in similar situations in the military context.[37]

Another substitute test used by the courts has been called the Endorsement Test. In applying that test, the court will look to whether a reasonable observer, aware of the history of the conduct at question, would view the government action as endorsing religion.[38] The Endorsement Test is favored by some *Lemon* Test critics because it is more common-sense based and far less formulaic than the *Lemon* Test. *Lemon v. Kurtzman* remains good law, however. As a result, when analyzing a government action under the Establishment Clause, the *Lemon* Test must be considered first, before looking at either the Coercion Test or the Endorsement Test.

Free Exercise Clause

Counterbalancing the Establishment Clause is the Free Exercise Clause (". . . nor prohibiting the free exercise thereof. . ").[39] Sometimes government action, instead of appearing to "establish" religion may unintentionally burden religion.[40] Just as the government doesn't actually have to "establish" a religion in the strict sense of the word to be guilty of violating the Establishment Clause, so too the government need not actually "prohibit" the exercise of religion to be guilty of violating the Free Exercise Clause. Most of the Free Exercise Clause cases involve government action which is not necessarily directed at religion, but may limit someone's ability to practice his religion through laws which are "religion-neutral." For example, a law which prohibits animal sacrifice, while generally applicable and not directed at practitioners of the Santeria religion would nonetheless inhibit the Santeria practitioners' ability to sacrifice animals as part of their religious practices.[41]

The leading such religion-neutral case is *Employment Division, Department of Human Resources of Oregon v. Smith*.[42] Smith's religion required him to use peyote as part of church ceremonies, but an Oregon state statute proscribed the possession of peyote. Because of his use of peyote as part of his Native American church, he was fired from his job at a drug

rehabilitation facility. Smith applied for unemployment compensation and was denied because he was fired for misconduct. He claimed that the denial of unemployment compensation violated the Free Exercise Clause, because it prevented him from freely exercising his religion.

Smith asserted that the court, in reviewing his case, should apply the most stringent review standard, known as strict scrutiny. To pass strict scrutiny, the government would have to show that the application of the statute was in furtherance of a compelling government interest, and that the government used the least restrictive means of furthering that compelling government interest. Previous cases had applied this standard to determine constitutionality of similar laws. The Supreme Court, in a decision joined by only five of the nine justices (a bare majority), refused to apply the strict scrutiny standard suggested by Smith and previously applied by other courts. Instead, the Supreme Court held that if a law is religion-neutral and of general applicability (the law applies to everyone, not just religious practitioners), as long as it is otherwise (procedurally) valid it passes muster under the Free Exercise Clause.[43] Thus, the Supreme Court held that the government could pass a law or enact a practice which burdens someone's ability to practice religion, as long as that law or practice was not directed at the religious practitioner and the law or practice applied to everyone and not just the religious practitioner.

In direct response to the Supreme Court Justices' refusal to apply the strict scrutiny standard to religion-neutral laws of general applicability which incidentally inhibit religious practitioners' ability to practice their religion (such as the Oregon stature criminalizing peyote possession), in 1993 Congress passed the Religious Freedom Restoration Act (RFRA).[44] RFRA prohibits the government from placing a substantial burden on a person's exercise of religion (even if the burden is a result of a rule of general applicability) unless the government can show

that the application of the burden is in furtherance of a compelling governmental interest and that it is the least restrictive means of furthering that compelling governmental interest. Evidently unhappy with the result in *Smith*, Congress simply legislated the application of strict scrutiny to similar cases in the future.

The constitutionality of RFRA as it applies to the federal government was affirmed by the Supreme Court in 2006.[45] This is significant for the military in that, as part of the federal government, RFRA applies to military actions which substantially burden a person's free exercise of religion. When courts review actions by the military which substantially burden a member's free exercise of religion, they will apply strict scrutiny. Consequently, any military policy or practice which substantially burdens a military member's free exercise of religion must be in furtherance of a compelling governmental interest and must be the least restrictive means of furthering that compelling governmental interest.

Free Speech Clause

The Free Speech Clause prohibits the government from abridging the freedom of speech.[46] Protections under the First Amendment's Free Speech Clause include religious speech.[47] Issues arise under the Free Exercise Clause when a government action somehow limits religious *conduct*, while issues arise under the Free Speech Clause when a government action somehow limits religious *speech*.

Government action limiting free speech can be one of two types, either content-based or content-neutral.[48] A content-based speech restriction is one which limits a particular type of message. For example, a law which prohibited anyone from stating, "I am a Christian" or "I am a Muslim" would be a content-based speech restriction. By contrast, a content-neutral speech restriction doesn't limit the message but instead imposes what has been called a "time, place or

manner restriction."[49] For example, a law which mandates that protesters must conduct protests at least five feet away from city streets between the hours of 0800 and 2200 would be a permissible time, place or manner restriction. Content-based speech restrictions are subject to strict scrutiny (see discussion above, under Free Exercise Clause), while content-neutral restrictions are subject to a much lower degree of scrutiny. Content-neutral restrictions will be upheld as long as they are reasonable in light of the purpose served by the forum.[50]

Also factoring into the legal analysis is whether the speech is made in a public or non-public forum. A public forum is one which by tradition or otherwise has been used for public debate and assembly, such as public parks. All other areas, including military bases, are considered non-public forums. Speech may be regulated more closely in a non-public forum.[51]

It is well-established that the military may regulate certain types of speech by its members which if made by civilians would be protected.[52] The decisive case on free speech in the military is *Parker v. Levy.* [53] In that case, an Army officer encouraged African-American soldiers to refuse to serve in Vietnam, and called Special Forces members liars, thieves, killers of peasants and murderers of women and children.[54] CAPT Levy was convicted of conduct unbecoming an officer and a gentleman and of conduct prejudicial to good order and discipline in the armed forces. He appealed his conviction to the Supreme Court on the basis that his First Amendment rights had been violated. In upholding the conviction, the Supreme Court recognized that the military is separate from civilian society in some respects, and that the demands of the military are such that under certain circumstances, military members' free speech rights may be trumped by the needs of the military society and mission. In so holding, the Court stated, "While members of the military are not excluded from the protection granted by the First

Amendment, the different character of the military community and of the military mission requires a different application of those protections."[55]

For example, the Uniform Code of Military Justice (UCMJ) prohibits officers from using contemptuous words against a long list of civilian officials[56] and prohibits members from using disrespectful language toward superiors.[57] While civilians are free to use contemptuous words against any number of elected officials, military members may not. Civilians may use disrespectful words against superiors at work without risking criminal prosecution, while military members may not. It is irrelevant for purposes of the UCMJ whether a member makes contemptuous or disrespectful speech while on-duty or off-duty, on-base or off-base.[58] In addition, Articles 133 and 134 of the UCMJ prohibit conduct which is prejudicial to good order and discipline or service-discrediting and conduct which is unbecoming an officer. Conduct includes speech.[59] No religious speech is explicitly prohibited by the UCMJ, but it is conceivable that under the right factual circumstances, a member's speech, including religious speech, could potentially violate Articles 133 or 134.

Consider the following example: a dental officer is a born-again Christian who is required to bear witness as part of his religion. While patients are in his dental chair he repeatedly proselytizes to them. Several patients have complained to him and to the dental squadron commander, but the dentist refuses to stop proselytizing. The dentist brags to other members of the squadron that God is a higher authority than the squadron commander and that he will not stop bearing witness. After noticing a patient's Star of David necklace, he tells the patient (a dependent of a military member) that she is going to Hell unless she accepts Jesus into her heart. The patient complains to the wing commander. Under the above circumstances, it is

conceivable that the dentist could be charged with either of Articles 133 or 134 because his open defiance of the commander violates good order and discipline and is unbecoming an officer.

The Court of Appeals for the Armed Forces (CAAF) has held that the military may prohibit speech which "interferes with or prevents the orderly accomplishment of the mission or presents a clear danger to loyalty, discipline, mission or morale of the troops."[60] Courts have not yet ruled on this issue in the context of religious speech.

Courts analyzing religious speech by military members will also look to whether the speech is private or official. To determine whether speech is private or official, courts will most likely look at the totality of the circumstances, including the status of the speaker, the status of the listener and the context and characteristics of the speech itself.[61]

Consider the following examples: at one end of the spectrum is religious speech made by one junior enlisted member to another, at an off-base social establishment after duty hours. Neither airman in this example is in uniform, nor is either in a supervisory relationship toward the other. That speech is likely to be held purely private, and enjoys the highest levels of protection under the Free Speech and the Free Exercise Clauses.

An example at the other end of the religious speech spectrum is the base commander, in uniform at a mandatory commander's call during duty hours in the post theater, telling the entire wing about his recent conversion to Islam. The base commander exhorts all present to recognize that worshipping Allah is the way to Heaven. That speech is likely to be held as official speech, and would therefore trigger an analysis under the Establishment Clause. Under the Establishment Clause analysis, a court would likely apply the *Lemon* Test and determine that under the "effects" prong, the base commander's action violated the Establishment Clause because the speech had the primary effect of establishing religion. The speech would also fail

both the Coercion Test and the Endorsement Test, given the mandatory nature of the commander's call and the fact that a reasonable person attending the commander's call would see the religious speech as a government endorsement of religion. In the example above, the post commander has clearly violated the Establishment Clause.

The two religious speech situations described above are relatively easy; most religious issues which arise in today's Air Force are not nearly so clear cut, and fall somewhere in the middle of the two extremes described. Consequently, commanders need clear guidance regarding religious speech and actions, because it is upon commanders which the burden to sort out religious issues regularly falls.

Applicable Department of Defense Regulation

Department of Defense Directive 1300.17, "Accommodation of Religious Practices Within the Military Services," applies to each of the services. It directs military commanders to consider the following factors when determining whether to grant a request for accommodation of religious practices:

> (1) The importance of military requirements in terms of individual and unit readiness, health and safety, discipline, morale and cohesion;
>
> (2) The religious importance of the accommodation to the requester;
>
> (3) The cumulative impact of repeated accommodations of a similar nature;
>
> (4) Alternative means available to meet the requested accommodation;
>
> (5) Previous treatment of the same or similar requests, including treatment of similar requests made for other than religious reasons.[62]

This directive was promulgated in 1988 and has not been substantially altered since. The recently released 2009 version of the directive remains essentially the same as the 1988 version, in spite of the fact that the 1993 Religious Freedom Restoration Act (RFRA) changed the way

that commanders should view requests for accommodation.[63] RFRA mandates that government policies which substantially burden someone's free exercise of religion must be in furtherance of a compelling governmental interest and that the burden must be the least restrictive means of furthering that compelling governmental interest. While the military will always have a compelling government interest in completing the military mission, courts will look closely at whether the burden placed on a member's ability to exercise his religion is the least restrictive means available. Consequently, RFRA compels commanders to grant religious accommodations when at all possible.

The Joint Ethics Regulation (JER)[64] is also applicable to each of the services. It states that "an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another."[65] This JER provision prohibits military members from using their official positions to endorse private organizations, including religious organizations.

The Army, Navy and Air Force all have service-specific regulations (or sections of regulations) dealing with religious accommodation.[66] In addition, all three services have published guidance on chaplain activities.[67] However, none of the services currently has comprehensive guidance dealing with accommodation, ministry and free exercise of religion issues.[68]

Guidelines Covering Religious Expression in the Air Force

In June 2005 the Headquarters Review Group Concerning the Religious Climate at [USAFA] (Review Group) published a report detailing seven specific events of "questionable behavior" concerning religious expression and made nine recommendations to the Acting

Secretary of the Air Force.[69] Several of the report's recommendations are specific to USAFA, but a number of others are applicable Air Force-wide. For instance, the Review Group recommended that the Air Force: "develop policy guidelines for Air Force commanders and supervisors regarding religious expression. . . ; reemphasize the requirement for all commanders to address issues of religious accommodation up front, when planning, scheduling and preparing operations; and develop guidance that integrates the requirements for cultural awareness and respect across the learning continuum, as they apply to Airmen operating in Air Force units at home as well as during operations abroad."[70]

In apparent response to the Review Group report, in August 2005 the Air Force established *Interim Guidelines Concerning the Free Expression of Religion in the Air Force* (*Interim Guidelines).*[71] The four-page *Interim Guidelines* addressed the "key areas" of religious accommodation, public prayer outside of voluntary worship settings, individual sharing of religious faith in the military context, the chaplain service, email and other communications as well as good order and discipline. With respect to public prayer, the *Interim Guidelines* stated that it "should not usually be included in official settings such as staff meetings, office meetings, classes or officially sanctioned activities such as sports events or practice sessions,"[72] but allowed for exceptions such as mass casualties, imminent combat and natural disaster.[73] The *Interim Guidelines* further advised that "a brief, non-sectarian prayer may be included in non-routine military ceremonies or events . . . such as a change-of-command or promotion . . . where the purpose of the prayer is to add a heightened sense of seriousness or solemnity, not to advance specific religious beliefs."[74]

The *Interim Guidelines* cautioned members that when sharing religious faith, they must be "sensitive to the potential that personal expressions may appear to be official expressions,"

especially when they involve superior/subordinate relationships. The *Interim Guidelines* further noted that the "more senior the individual, the more likely that personal expressions may appear to be official expressions."[75]

The *Interim Guidelines*' discussion of the chaplain service states, "chaplains are commissioned to provide ministry to those of their own faiths, to facilitate ministry to those of other faiths, and to provide care for all service members, including those who claim no religious faith." The *Interim Guidelines* further caution chaplains to "respect professional settings where mandatory participation may make expressions of religious faith inappropriate."[76]

Public and Congressional response to the *Interim Guidelines* was immediate. Christian organizations interpreted the *Interim Guidelines* as a prohibition against chaplains mentioning the name of Jesus or evangelizing and began a national petition campaign, urging President Bush to enact an Executive Order allowing military chaplains to pray according to their faiths.[77] Representative Walter Jones (R-NC), along with approximately 70 other members of Congress endorsed a 25 October 2005 letter to President Bush, also urging an Executive Order.[78] In addition, a group representing hundreds of evangelical Christian chaplains threatened to remove its chaplains from the military unless chaplains were given more leeway in public prayers.[79]

In February 2006, only six months after issuing the *Interim Guidelines*, the Air Force issued *Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force (Revised Interim Guidelines).*[80] At a minimum, the timing of the release of the new guidelines suggests that the Air Force was well aware of the controversy the first set of guidelines had caused.

At only one page, the *Revised Interim Guidelines* are substantially shorter than the previous version, and many consider them a watered-down version of the *Interim Guidelines*.

Markedly absent from the *Revised Interim Guidelines* is any reference to religious coercion by supervisors. Instead, the *Revised Interim Guidelines* assure superiors that they "enjoy the same free exercise rights as other airmen."[81] In addition, the *Revised Interim Guidelines* state that the Air Force respects "the rights of chaplains to adhere to the tenets of their religious beliefs," and that chaplains "will not be required to participate in religious activities, including public prayer, inconsistent with their faiths."[82] It is unclear whether chaplains are free to exhort the name of Jesus in public prayers under the *Revised Interim Guidelines*, but the removal of the term "non-sectarian" from the guidelines could not have been accidental.

Conservative Christian groups praised the *Revised Interim Guidelines*. A senior official at Focus on the Family stated, "We hope these guidelines will bring an end to the frontal assault on the Air Force by secularists who would make the military a wasteland of relativism, where robust discussion of faith is impossible."[83] Representative Walter Jones said the guidelines "are a step in the right direction."[84]

USAFA graduate Mikey Weinstein criticized the new guidelines, calling them "a terrible disappointment and a colossal step backward."[85] The national director of the Anti-Defamation League also expressed disappointment, stating, "taken as a whole, these revisions significantly undermine the much-needed steps the Air Force has already taken to address religious intolerance."[86] The Executive Director of Americans United for the Separation of Church and State condemned the new guidelines, stating that they "focus heavily on protecting the rights of chaplains while ignoring the rights of nonbelievers and minority faiths."[87]

The House of Representatives continued to have a keen interest in the issue of religious expression in the armed forces. During 2006, the National Defense Authorization Act made its way through the Senate and the House. While in the House, a group led by Representative Jones

attached an amendment to the Bill which stated, "each Chaplain shall have the prerogative to pray according to the dictates of the Chaplain's own conscience, except as must be limited by military necessity, with any such limitation being imposed in the least restrictive manner feasible." [88] The Senate version included no such amendment.

While in committee discussing the differences between the House and Senate versions, Senator John Warner, Chair of the Senate Armed Services Committee, suggested that the amendment should not be included in the final version of the bill because Congress would not have enough time [before the end of the Congressional session] to fully debate and discuss the issue.[89] Senator Warner stated that he had talked to each of the Head Chaplains for the various services and that each opposed the inclusion of the amendment as worded.[90]

In an apparent compromise, the committee members agreed that amendment would be excluded from the final version of the bill, but that the following language would be included in the report:

> The Secretary of Defense will hold in abeyance enforcement of the regulations newly promulgated by both the Air Force and Navy [91] until such time as the Congress has had an opportunity to hold its hearings, go through a deliberative process, and then decide whether it wishes to act by way of sending a conference report to the President for purposes of becoming the law of the land.[92]

Senator Warner recognized that the report language had no force of law on the services.[93]

President Bush did not issue an Executive Order regarding military chaplains, nor did Congress revisit the specific issue. The Secretary of Defense did not order either the Air Force or the Navy to rescind the 2006 regulations. In fact, Secretary of the Air Force Michael W. Wynne issued a memorandum on 21 November 2006 stating that "the Air Force intends to defer taking such further action on such guidance until there has been an opportunity for the Congress

to hold such hearings [on religious guidelines] . . ."[94] Consequently, the February 2006 *Revised Interim Guidelines* remain valid Air Force guidance.

Since 2005, when the Headquarters Review Group Report determined that in the Air Force there was "a lack of operational instructions that commanders and supervisors can use as they make decisions regarding appropriate exercise of religion in the workplace,"[95] the Air Force has produced two separate (and some say conflicting) versions of guidance regarding religious expression. However, the fact that religious conflict issues continue to arise may be evidence that commanders and supervisors are either unaware of the guidance or unclear how the guidance should be applied. While some commanders may have the luxury of being able to consult a lawyer or chaplain for every religious issue which arises, others may be unable to or disinclined to do so. The point is that commanders should have available to them clear guidance regarding religious expression in the Air Force which may be straightforwardly applied (by commanders, not lawyers or chaplains) to real situations. To date, the Air Force has not provided such guidance.

An issue which arises when attempting to formulate such guidance is that the more detailed the guidance, the more likely it is that it will run afoul of the *Lemon* Test. Any guidelines promulgated by the Air Force will have to pass muster against the three prongs of the test (purpose, effects and entanglement). The more government involvement, the more likely it is that a court would find, as the Supreme Court did in *Lemon v. Kurtzman*, that the government has entangled itself too much into religion.[96] Any new guidelines promulgated by the Air Force should be detailed enough for commanders and supervisors to follow, yet not so detailed as to risk violating the entanglement prong of the *Lemon* Test. In addition, any new guidelines will

obviously have to strike the appropriate balance between the Establishment and Free Exercise Clauses, while bearing in mind members' rights under the Free Speech Clause.

Suggested New Guidance For Uniformed Air Force Members

Rather than the four page 2005 *Interim Guidelines* or the single page 2006 *Revised Interim Guidelines*, the Air Force is in need of guidance which is short and clear and which commanders can readily apply to actual situations. To that end, the Air Force should adopt the following three rules regarding religious expression in the Air Force:

1. No public prayer at command functions. Command functions include both events which are actually mandatory (staff meetings, changes of command, graduation exercises at military schools, meals for trainees and cadets), as well as those which are *de facto* mandatory by nature of the military environment (retirements, dining-ins, military balls, awards ceremonies). The Supreme Court has long recognized the special nature of the military environment,[97] and an important feature of that special environment is the coercion inherent in superior-subordinate relationships.[98] While there is an argument to be made that public prayer should not be abolished at "voluntary" events such as dining-ins, in the military environment the pressure which often accompanies an "invitation" to attend such an event renders them compulsory in fact if not in name.

By eliminating public prayer at command functions, chaplains who feel pressured to pray in a nonsectarian manner against the tenets of their religion will be relieved of that conflict, and military members who do not wish to pray at all will not be forced to stand uncomfortably silent or risk the disapproval of both the majority and military superiors. A reasonable alternative to a chaplain-led public prayer is a chaplain-led moment of silence. During a moment of silence

before command events, those who wish to pray may do so according to the tenets of the religion to which he or she belongs, while those who do not are not forced to.

2. No coercive evangelizing or proselytizing.[99] While some have attempted to articulate a distinction between evangelizing and proselytizing, from the standpoint of the First Amendment they are on equal footing. Both evangelizing and proselytizing are protected speech under the First Amendment to the same degree as other speech is protected. Because the military may restrict members' speech which "interferes with or prevents the orderly accomplishment of the mission or presents a clear danger to loyalty, discipline, mission or morale of the troops,"[100] evangelizing or proselytizing may be restricted when it is coercive. When either evangelizing or proselytizing is coercive, it interferes with the orderly accomplishment of the mission and is a clear danger to morale. Someone who is being pressured to listen to unsolicited gospel or to convert to an unwanted religion cannot possibly be accomplishing the mission in an orderly manner. Whether evangelizing or proselytizing is coercive is fact dependent, but examples of potentially coercive situations would be those involving a supervisor-subordinate relationship, those involving disparities in rank, grade or position (especially if the senior member is a commander), or those involving repeated attempts when the listener has made it clear that the evangelizing or proselytizing is unwelcome.

3. No official endorsement of any particular religion or religion in general. This rule applies to both actions and speech, and the key to this rule is the descriptive term, "official." This rule is also fact dependent, but certain generalities apply. For example, the more senior a member is, the more likely it is that he or she will be perceived as acting or speaking in an official capacity.[101] A member in a position of authority vis a vis another member (commander, supervisor, coach, instructor) is more likely to be perceived as acting or speaking in an official

capacity than one who is on equal footing with another member. In addition, a member in uniform is more likely to be perceived as acting or speaking in an official capacity than one in civilian clothes. Finally, one who is involuntarily present during the religious action or speech is more likely to perceive that the action or speech is official in nature than one who is voluntarily present. The more captive the audience, the more likely it is that the audience will perceive the action or speech as official.[102]

The above three rules are short, easily understood and capable of ready application to real world situations. In spite of their brevity, however, the rules are comprehensive enough to cover virtually all situations involving issues of religious expression in the Air Force.[103] In addition, the rules strike an appropriate balance between the three First Amendment clauses, and avoid running afoul of either Supreme Court decisions or RFRA.

Most importantly, limiting Air Force guidance to the three simple rules listed above places the decision-making authority with respect to religious expression issues more clearly where it belongs, with commanders. The simplicity of the rules themselves encourages commanders to apply those rules to factual situations, without the need to consult a lawyer-chaplain team for every religious expression issue which arises in a squadron. Commanders are of course free to consult with lawyers or chaplains as necessary, but the simplicity of the rules should limit the necessity for commanders to do so.

Conclusion

The recent high-visibility issues regarding religious expression in the military highlight the need for clear, commander-friendly guidance on the topic. While there currently exist several layers of guidance, much of it can be confusing to commanders trained in neither the law nor theology. The emotionally-charged nature of religious issues will almost guarantee that

commanders will continue to have to deal with them in the future. In doing so, commanders should have available to them comprehensive yet easily-applied rules, such as the three simple rules suggested above. Consequently, the Air Force specifically, and Department of Department generally, should issue (more) new guidance on religious expression, modeled after the suggested new guidance provided in this paper.

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[1] Goodstein, Laurie. "Air Force Academy Staff Found Promoting Religion." *New York Times,* 23 June 2005.
[2] Lubold, Gordon. "Religion on Their Sleeves?" *Air Force Times*, 25 Dec 2006.
[3] DoD IG Report No. H06L102270308, Alleged Misconduct by DoD Officials Concerning Christian Embassy, 20 July 2007.
[4] Report, Headquarters Review Group, 22 June 2005.
[5] Ibid.
[6] Goodstein, Laurie. "Air Force Academy Staff Found Promoting Religion." *New York Times,* 23 June 2005.
[7] Report, Headquarters Review Group, 22 June 2005, p. ii.
[8] Goodstein, Laurie. "Evangelicals are a Growing Force in the Military Chaplain Corps." *New York Times,* 12 July 2005.
[9] Ibid.
[10] "Suit Against Air Force Academy Dismissed." *Washington Times,* 26 October 2006.
[11] *Klingenschmitt v. Winter*, U.S. District Ct. for the District of Columbia, filed 25 October 2006.
[12] Cooperman, Alan, "Navy Chaplain Guilty of Disobeying a Lawful Order." *Washington Post,* 15 September 2006.
[13] MacFarquar, Neil. "Speakers at Academy Said to Make False Claims." *New York Times,* 7 February 2008.
[14] *MRFF v. Gates*, U.S. District Ct. for the District of Kansas, filed 5 March 2008.
[15] Ibid.
[16] Winn, Patrick. "Religion At Issue." *Air Force Times*, 11 August 2008.
[17] "Debate Rages Over Attack on Jewish Soldier." *JTA,* 13 October 2008.
[18] MRFF Press Release, 16 October 2008.
[19] *MRFF v. Gates*.
[20] Ziezulewicz, Geoff, "AF Colonel Accused of Imposing Religion." *Stars and Stripes,* 20 February 2009.
[21] Lichtblau, Eric, "Air Force Looks Into 'Inspirational' Video." *New York Times,* 14 March 2009.
[22] Ibid.
[23] Ibid.
[24] U.S. Constitution, Amendment 1, 1791.
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] *McCreary County v. ACLU*, in *Supreme Court Reporter*, vol. 125 (2005), 2733.
[29] *United States Supreme Court Reports,* vol. 403 (1971), 602.
[30] *Lemon v. Kurtzman,* in *United States Supreme Court Reports,* vol. 403 (1971), 602.
[31] *McCreary County v. ACLU*, 2722.
[32] *Lemon v. Kurtzman*, 602.
[33] *Lee v. Weisman,* in *United States Supreme Court Reports* vol. 505 (1992), 577 (nonsectarian prayer at high school graduation coercive).
[34] *Lee v. Weisman*, 587.
[35] *Santa Fe Independent School District v. Doe*, in *United States Supreme Court Reports,* vol. 530 (2000), 290.
[36] *Mellen v. Bunting*, in *Federal Reporter,* vol. 327 (3d) (2003), 355.
[37] This conclusion is of course based upon the Supreme Court's current makeup. As the makeup of the Court changes, so too may the likely outcome of Establishment Clause cases which reach the Court.
[38] *Lynch v. Donnelly*, in *United States Supreme Court Reports,* vol. 465 (1984) 668.
[39] U.S. Constitution, Amendment 1, 1791.

[40] Intentional burdening of religion won't be discussed here, as those are easy cases, and clearly unconstitutional.
[41] Contrast with *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, in *United States Supreme Court Reports*, vol. 508 (1993), 520, in which the City of Hialeah, Florida passed city ordinances specifically targeted at Santeria practitioners.
[42] *United States Supreme Court Reports*, vol. 494 (1990), 872.
[43] *Employment Division, Department of Human Resources of Oregon v. Smith*, in *United States Supreme Court Reports*, vol. 494 (1990), 878.
[44] 42 U.S.C. 2000bb.
[45] *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, in *United States Supreme Court Reports*, vol. 546 (2000), 418.
[46] U.S. Constitution, Amendment 1, 1791.
[47] *Widmar v. Vincent*, in *United States Supreme Court Reports*, vol. 454 (1981) 269.
[48] See *Turner Broadcasting, Inc. v. Federal Communications Commission*, in *United States Supreme Court Reports*, vol. 512 (1994), 622.
[49] *Clark v. Community for Creative Non-Violence*, in *United States Supreme Court Reports*, vol. 468(1984), 293.
[50] *Cornelius v. NAACP*, in *United States Supreme Court Reports*, vol. 473 (1985), 806.
[51] *Cornelius v. NAACP*, 806.
[52] *Parker v. Levy*, in *United States Supreme Court Reports*, vol. 417 (1974), 733.
[53] *United States Supreme Court Reports*, vol. 417 (1974), 733.
[54] *Parker v. Levy*, 737.
[55] *Parker v. Levy*, 758.
[56] UCMJ Art. 88.
[57] UCMJ Arts. 89, 91.
[58] Rules for Courts-Martial 202, 2008 edition.
[59] *Parker v. Levy*, 733.
[60] *U.S. v. Brown*, in *Military Justice Reports*, vol. 45 (1996), 389.
[61] Fitzkee, David E. and Letendre, Linell, "Religion in the Military: Navigating the Channel Between Religion Clauses." *Air Force Law Review, 59, 207*, p.38.
[62] DoDI 1300.17, Enclosure, para1 (2009).
[63] It is inconceivable that the 2009 version of the directive makes no mention of RFRA, in spite of RFRA's major impact on the way commanders must view requests for religious accommodation.
[64] 5 C.F.R. Section 2635.702(b).
[65] Ibid.
[66] AR 600-20 (2002), SECNAVINST 1730.8A (1997), AFI 36-2706 (2004).
[67] AR 165-1 (2004), NWP 1-05 (2003), AFPD 52-1(2006).
[68] To date, the most comprehensive and clear guidelines on religious expression in the federal workplace were promulgated in 1997, during the Clinton administration. Those guidelines specifically excluded uniformed military personnel.
[69] Report, Headquarters Review Group, 22 June 2005, ii.
[70] Ibid.
[71] U.S. Air Force, Interim Guidelines Concerning Free Exercise of Religion in the Air Force (2005), available at http://www.usafa.af.mil/superintendent/pa/religious.cfm.
[72] Ibid.
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] "ACLJ National Petition Tops 160,000." *Business Wire*, 14 Dec 2005.
[78] Ibid.
[79] Jordan, Bryant, "Evangelicals Threaten to Remove Chaplains from Military." *Air Force Times*, 2 Jan 2006.
[80] U.S. Air Force, Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force (2006).
[81] Ibid.
[82] Ibid.
[83] Roach, Erin, "Air Force Religion Guidelines Garner Both Praise and Criticism." *Baptist Press*, 10 Feb 2006.
[84] Ibid.

[85] Ibid.
[86] Ibid.
[87] "Air Force Retreats From Religious Guidelines After Religious Right Push," *Church and State*. 1 Mar 2006.
[88] Joint Conference, House and Senate Armed Services Committees, addressing prayer in the armed forces, 19 Sep 2006.
[89] Ibid.
[90] Ibid.
[91] U.S. Air Force, Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force (2006) and Secretary of the Navy Instruction 1730.7C (2006), Religious Ministry Within the Department of the Navy.
[92] Joint Conference, House and Senate Armed Services Committees, addressing prayer in the armed forces, 19 Sep 2006.
[93] Ibid.
[94] Wynne, Michael W., *Memorandum for ALMAJCOM-FOA-DRU/CC*, 21 November 2006.
[95] Report, Headquarters Review Group, 22 June 2005, iii.
[96] In fact, it is possible that some may argue that the August 2005 iteration of the *Interim Guidelines* contained enough detail to border on violating the entanglement prong of the *Lemon* Test. The February 2006 iteration suffers from no such excess of detail; the length has been cut from four pages to one page, whilec ritics and supporters alike are left wondering exactly what the guidance means.
[97] See *Parker v. Levy*, 733.
[98] See *U.S. v. Duga*, in *Military Justice Reports*, vol. 10 (1981), 206 for discussion of coercion in the context of the right against self-incrimination.
[99] Evangelize means to preach the gospel or to convert to Christianity. Proselytize means to induce someone to convert to one's own religious faith. *American Heritage Dictionary*, Fourth Edition, 2006.
[100] *United States v. Brown*, in *Military Justice Reports*, vol. 45 (1996), 395.
[101] The old adage, "There's no such thing as a casual conversation with a general officer," comes to mind.
[102] For example, an O-6 discussing religious topics in the minutes before an official staff meeting begins would likely be perceived by an O-3 who is required to attend the meeting as speaking in an official capacity.
[103] Accommodation of religious practices is not covered by the suggested rules, as that has been covered by DoD 1300.17.

Bibliography

Department of Defense Inspector General, Report No. H06L102270308, Alleged Misconduct by DoD Officials Concerning Christian Embassy, 20 July 2007.

Dobosh Jr., William J. "Coercion in the Ranks: The Establishment Clause Implications of Chaplain-led Prayers at Mandatory Army Events." *Wisconsin Law Review*, Vol. 6 (2007), pgs. 1493-1562.

Employment Division, Department of Human Resources of Oregon v. Smith, in *United States Supreme Court Reports,* vol. 494, 1990.

Fagin, Barry S. and Parco, James E. "The One True Religion in the Military." *The Humanist*, Sep-Oct 2007.

Fitzkee, David E. and Letendre, Linell A. "Religion in the Military: Navigating the Channel Between Religion Clauses." *Air Force Law Review* 59, 2007, p. 1.

"Interim Guidelines Concerning Free Exercise of Religion in the Air Force," August 2005.

Lee v. Weisman, in *United States Supreme Court Reports* vol. 505, 1992.

Lemon v. Kurtzman, in *United States Supreme Court Reports,* vol. 403, 1971.

McCreary County v. ACLU, in *Supreme Court Reporter*, vol. 125, 2005.

Military Religious Freedom Foundation, Joint MRFF/NAACP Letter to Secretary of Defense Press Release, 16 October 2008.

Military Religious Freedom Foundation and Specialist Dustin Chalker v. Secretary of Defense Gates, U.S. District Court for the District of Kansas, filed 25 September 2008.

Military Religious Freedom Foundation and Specialist Jeremy Hall v. Secretary of Defense Gates, U.S. District Court for the District of Kansas, filed 5 March 2008.

Milonig, Lt Col William. *The Impact of Religious and Political Affiliation on Strategic Military Decisions and Policy Recommendations,* Research Report. Carlisle Barracks, PA: U.S. Army War College, March 2006.

Neem, Johann. "Beyond the Wall: Reinterpreting Jefferson's Danbury Address." *Journal of the Early Republic*, 27, 1 (Spring 2007), p. 139.

Parker v. Levy, in *United States Supreme Court Reports,* vol. 417, 1974.

Report of the Headquarters Review Group Concerning the Religious Climate at the U.S. Air Force Academy, 22 June 2005.

"Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force," 9 February 2006.

Santa Fe Independent School District v. Doe, in *United States Supreme Court Reports*, vol. 530, 2000.

Schweiker, Kenneth J. "Military Chaplains: Federally Funded Fanaticism and the United States Air Force Academy." *Rutgers Journal of Law and Religion*, 8, 1 (Fall 2006).

Wilcox, Clyde. "Laying Up Treasures in Washington and in Heaven: The Christian Right and Evangelical Politics in the Twentieth Century and Beyond." *Magazine of History* 17, 2 (Jan 2003), p. 23.